

June 29, 2006

**By Electronic Filing**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: Ex Parte Filing: Emergency Alert System, EB Docket No. 04-296**

Dear Ms. Dortch:

This morning Kalpak Gude of PanAmSat Corporation and Peter Rohrbach and Karis Hastings of Hogan & Hartson, counsel for SES Americom, Inc., met with Barry Ohlson, Senior Legal Advisor to Commissioner Adelstein to discuss matters relating to the above-referenced proceeding. The attached documents were distributed at the meeting and formed the basis for the discussion.

Please direct questions concerning this matter to the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. A. Hastings', with a stylized flourish at the end.

Karis A. Hastings  
Counsel for SES Americom, Inc.

cc: Barry Ohlson

## Emergency Alert System (EB Docket No. 04-296)

### Petition for Partial Reconsideration (filed Dec. 27, 2005) –

PanAmSat/SES Americom/Intelsat support the extension of EAS requirements to DTH satellite services. Their petition for partial reconsideration raises two issues:

1. ***Who should be required to comply?*** EAS obligations relate to content of programming and can best be met by the programming distributors that control the content of DTH programming.
  - i. Commission should impose EAS obligations directly on programming distributors, rather than indirectly via satellite operators
  - ii. If Commission declines this request, it should grandfather existing contracts
2. ***Application to non-U.S. services:*** EAS obligations should not apply to DTH FSS services directed primarily to consumers outside the United States

### Arguments

#### 1. DTH programming distributors should be directly subject to the EAS requirements

- ***Most logical; promptest and most effective EAS dissemination.*** Programming distributors control the content of programming and are in the best position to incorporate EAS messages into that content. Placing EAS obligations with the party best able to meet them is the most logical approach and the most reliable way to ensure prompt and effective distribution of EAS messages to DTH FSS customers.
- ***FCC has ample authority to regulate programmers***
  - Earth station licensing
  - Section 303(v) jurisdiction over distribution or broadcasting of programming or services via satellite directly to the subscriber's premises
- ***Putting FSS operators in the role of "enforcer" undermines EAS and harms FSS, with no upside benefit***
  - ***Unnecessary middleman:*** FSS operators cannot comply directly – they can act only as an unnecessary middleman
  - ***Undermines effectiveness:***
    - FSS operators at best have only contractual remedies
    - Current approach writes the FCC out of enforcement – unless Commission imposes obligations directly on DTH providers, no way for agency to force DTH programmers to comply
  - ***Delays EAS dissemination:*** FSS operators currently have no basis on which to demand compliance by DTH programmers already under contract

- ***Inconsistent with other services:*** For all other services, Commission has imposed EAS requirements directly on programming distributor
  - ***Inconsistent with Commission's statements regarding HSD services:*** Commission found that it would be "very burdensome" for HSD service providers, who are not the ones providing programming to HSD subscribers, to distribute EAS messages
  - ***Unnecessary costs and burdens:*** Imposes contracting, monitoring, enforcement, litigation and other costs on FSS operators, none of which promotes EAS message dissemination or serves any other policy objective
  - ***Bizarre and confusing patchwork:*** Different channels on single DBS "one dish" service would be treated differently – for some, DBS programmer would handle EAS; for others, FSS operator would handle EAS; and potentially for some, there would be *no* EAS requirement
- ***No logical or policy objections***
    - Oppositions raised a number of erroneous procedural objections but never disputed the fundamental logic of our request
    - Our reply rebuts each of their jurisdictional and procedural claims
  - ***Grandfathering request***
    - If the Commission declines our request to impose EAS obligations directly on programmers, it should grant our grandfathering request
      - ***Wishing won't make it so:*** FSS operators have no way to force DTH programmers to comply
        - No means, other than through contracts, to force customers to participate in EAS system
        - Existing contracts do not give FSS operator this right
        - DTH programmers tend to enter into long term contracts – 2007 compliance not realistic across the board
2. **Application to Non-U.S. Systems:** EAS obligations should not be applied to DTH FSS services that serve the U.S. solely on a "spillover" basis
- ***Will not promote EAS message dissemination:***
    - Programmers are unlikely to interrupt foreign programming to include warnings regarding U.S. emergencies
    - If these services are not exempted, most likely effect is that foreign programmers will stop serving U.S. customers
    - Will deprive U.S. customers of access to valuable programming without broadening EAS access in the U.S.
  - ***International comity:*** Request should also be granted based on considerations of international comity and the long-held U.S. policy that countries should not block foreign programming at their borders based upon content restrictions
  - ***No opposition:*** This request has not been opposed

